If, at the end of this period, the parties have reached an agreement, an executed version of the agreement would be submitted to the Commission to be placed in a file available for public inspection. No action would be required by the Commission in the event an agreement has been reached, yet public disclosure would help guard against unjust or unreasonable discrimination.

If, at the end of the voluntary negotiation period, the parties have not reached an agreement, either party should be able to file a request for Commission arbitration. The request should specify the issues upon which agreement has not been reached and that party's position with respect to such issues. A pleading cycle would ensue as set forth in Section 1.45 of the Commission's rules. If interconnection compensation is among the issues listed in the request, the non-filing party would be required to submit to the Commission the cost justification for its proposed rates, along with any appropriate request for confidential treatment, as part of its response to the request. The submission of cost studies and other data used to develop the rates or charges in question is critical if the Commission is to make reasoned decisions with respect to interconnection compensation issues. The response would also contain the responding party's position with respect to the issues listed in the request. The requesting party would be entitled to a reply.

The foregoing proposal attempts to combine an effort to allow the parties to reach an interconnection agreement through private negotiation with specific direction from the Commission

on core issues. It would be only if the parties fail to reach an agreement within a set time period that the good offices of the Commission would be called upon. The Commission's involvement, rather than that of the state regulatory entities, is necessary in order to assure uniform interpretation of the Commission's specific directives. Centennial believes that such a procedure is less burdensome to both the parties and the Commission than requiring the filing of contract tariffs - a procedure that assumes that the parties will reach agreement through private negotiations but does not address the duration of the negotiations and requires Commission involvement after the parties have reached an agreement. This limits the Commission's active role to a situation where the parties are unable to reach agreement on their own.

2. Commission Involvement In LEC/CMRS Negotiations Is Required In Puerto Rico

As the B-block PCS licensee for the Puerto Rico-U.S. Virgin Islands MTA, Centennial has encountered a regulatory and jurisdictional situation that exemplifies the need for Commission involvement in the CMRS/LEC interconnection agreement approval process. In the Commonwealth of Puerto Rico, there is no regulatory agency that regulates the activities, services or facilities of PRTC, the only local telephone exchange company on the island. In 1974, by Act of the Commonwealth Legislature, the Puerto Rico Telephone Authority ("PRTA") was created as an instrumentality of the Commonwealth of Puerto Rico to be the

vehicle to acquire 100 percent of the stock of the PRTC from ITT. Thus, PRTC became a wholly-owned corporate subsidiary of PRTA. That same law declared that "it is desirable that the Communications Facilities [including the telephone system owned and operated by PRTC] in Puerto Rico be owned and operated by or through the Puerto Rico Telephone Authority."[32]

The law makes clear that PRTA/PRTC is self-regulating. That is, PRTA is authorized to,

> determine, fix, impose, charge, alter and collect reasonable rates, fees and charges and other terms and conditions of service for the use of Communications Facilities or for the services rendered thereby or for any equipment sold or leased by it in connection with Communications Facilities....[33]

Neither the Puerto Rico Public Service Commission nor any

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[32]27 L.P.R.A. § 403(b). Section 402 defines the term "Communications Facilities" as:

> ... all real, personal, or combined property of any nature, that may be used or be useful at present or in the future in relation to the operation of the telephone, telegraph, radio, cable systems or devices, or any other communication system or device, including, but nor limited to, the System, together with all of its improvements, expansions, innovations, renewals and replacements.

27 L.P.R.A. § 402. The same section defines the "System" as:

> ... all property of any nature, real, personal or mixed, constituting the telephone system of the Puerto Rico Telephone Company, a Delaware corporation operating a telephone system in the Commonwealth of Puerto Rico.

Id. PRTA and PRTC claim that the 1974 law codified the actual monopoly then enjoyed by PRTC in the island's telecommunications marketplace by granting PRTA a legal monopoly in all intra-island telecommunications matters.

[33]27 L.P.R.A. § 407(m).

other governmental regulatory body in Puerto Rico has any jurisdiction over PRTC. Specifically,

> [t]he rates, fees and charges and other terms and conditions of service fixed by the Governing Board [of PRTA] under the provisions of this chapter for the use of the Communication Facilities or for the services rendered thereby or for any equipment sold or leased by [PRTA] in connection with Communication Facilities, and the acquisition, construction and operation of Communication Facilities by the [PRTA], shall not be subject to control or approval by any department, division, commission, board, body, bureau or agency of the Commonwealth of Puerto Rico.[34]

Thus, PRTA owns, operates and regulates the "Communications Facilities" in Puerto Rico.

There are two equally compelling regulatory anomalies in this structure. First and most obvious is the fact that the only entity in Puerto Rico with any degree of responsibility for PRTC and its services is its own direct parent. The issue here goes well beyond a state government regulating a state-owned monopoly telephone company. Even accepting, for the sake of discussion, that there is nothing per se improper with a state government regulating a state-owned monopoly telephone company, it is unacceptable for the relationship between regulator and regulatee to lack **any** independence. The relationship between PRTA and PRTC is that of parent-subsidiary with all the legal obligations and fiduciary duties that characterize such relationships.

Any shred of independence is dispelled by the fact that the PRTA and PRTC have the **identical** Board of Directors, including the same Chairman and Vice-Chairman, and **five of the six officers**

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[34] 27 L.P.R.A. § 410 (emphasis added).

of the PRTA are officers of PRTC. Indeed, the Executive Director and Assistant Executive Director of PRTA are the President and only Senior Vice-President of PRTC respectively; the Treasurer and Assistant Treasurer of PRTA are the Vice President/Finance-Comptroller and Treasurer of PRTC respectively; and the Vice President/Legal Affairs-Corporate Security-Human Resources for PRTC is also an officer of PRTA. The majority of the individuals on PRTA's governing board that are authorized to review PRTC's rates and practices have legal, fiduciary and other responsibilities to PRTC as officers and/or directors of that corporation.[35] The relationship between PRTA and PRTC could not be more incestuous and conflict-ridden.

The second and equally compelling regulatory anomaly is de facto in nature. Although, under Commonwealth law, PRTA is empowered to regulate itself, there is no evidence that PRTA operates as even a nominal regulatory agency. PRTA has not promulgated any procedural or substantive rules. It has not issued any decisions or policy pronouncements regarding regulation of PRTC's services or facilities. It has not established any "public interest" standards. There is no opportunity for public participation.[36] There is no known

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[35]The information contained in this paragraph can be found in the 1994 PRTA Annual Report.

[36]PRTC is required by law to hold public hearings only with respect to increases in its rates for "basic and essential" services. 27 L.P.R.A §§ 261-262. Even as to these types of basic dial tone services, there is no evidence that PRTA has ever conducted such hearings.

regulation of PRTC's rates, be it traditional rate of return regulation, price cap regulation or any other form of regulation. There have been no orders or decisions regarding cost accounting or addressing the need for safeguards where PRTC provides both competitive (i.e., CMRS) and monopoly (landline telephone) services. Finally, PRTA's decisions are not even subject to legislative veto.[37]

This system of self-regulation, where a governmental instrumentality regulates itself, was conceived by the Commonwealth of Puerto Rico in a 1974 monopoly environment where the legislature believed that the residents of Puerto Rico would be well served by the provision of telecommunications services under such an arrangement because as a governmental entity, PRTA would be imbued with the public interest. Although questions could be raised about this rationale, this form of self-regulation in a competitive environment (where PRTC's services are being rendered to its competitors) suffers from an irreconcilable conflict of interest. In effect, the Commonwealth of Puerto Rico is the only jurisdiction in the United States where the monopoly LEC regulates itself. As a result, any Commission efforts to promote the development of PCS as a competitor in the local exchange marketplace are destined to fail in Puerto Rico unless the Commission steps in to fill the

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[37]27 L.P.R.A. § 410. See also Puerto Rico Telephone Authority, *Bond Prospectus*, Series M and N ("Bond Prospectus") (March 25, 1993) at 3, and Act No. 21 of the Legislative of Puerto Rico (approved May 31, 1995).

regulatory void.

It is against this absence of a regulatory forum and regulation that Centennial has tried to negotiate a PCS interconnection agreement with PRTC. This situation has armed PRTC with the ability to delay without regulatory consequence. Aside from the tremendous leverage that PRTC enjoys as a monopoly LEC in any interconnection negotiations, the lack of a regulatory forum or independent arbiter makes such negotiations a futile exercise.

There can be no effective negotiations without full acceptance of the "co-carrier" concept by both the LEC and the CMRS provider. That concept has no real meaning unless it effectively levels the negotiating field. Centennial approached PRTC on a carrier-to-carrier basis with an interconnection request that would promote the Commission's pro-local competition policies by allowing the subscribers of both carriers to reach each other. It is the neutrality of this approach that is rejected by PRTC. In particular, PRTC has made clear to Centennial that it views an interconnection request from a PCS carrier as coming from an entity that wants to use its monopoly landline network. Despite Commission pronouncements to the contrary, PRTC regards Centennial as a potential user of its network facilities. It views the Commission's mandatory interconnection policy as imposing a burden on its monopoly local exchange operations and that Centennial, as the entity needing the interconnection, should shoulder that burden. As far as PRTC

is concerned, any costs that it incurs in accomplishing the physical interconnection are Centennial's responsibility. PRTC believes that it bears no economic responsibility in the interconnection of the two networks. If the purpose of requiring "co-carrier" treatment is to effectuate the Commission's pro-competition policy then PRTC's position on this matter demonstrates that there is a dire need for the Commission to take steps to enforce that policy. Attached to these comments as Exhibit 1 is a description of Centennial's experience with PRTC which provides a vivid demonstration of these contentions.

3. The Commission Should Preempt State Regulation Of Intrastate Interconnection Compensation Matters

Centennial concurs with the Commission's tentative conclusion that it has adequate authority under the Communications Act to implement the interconnection policies discussed in the Notice.[38] Centennial believes that several of

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[38]Notice at ¶111. Centennial agrees with the Commission that it has the authority to preempt state regulation in the area of interconnection compensation "to the extent that such regulation precludes (or effectively precludes) entry of CMRS providers." Id. Centennial also agrees that "to the extent state regulation in this area precludes reasonable interconnection, it would be inconsistent with the federal right to interconnection established by Section 332 and the FCC's prior decision to preempt state regulation that prevents the physical interconnection of LEC and CMRS networks." 47 USC §332(c). Similarly, the Commission has the authority to preempt state regulation in the area of interconnection compensation to the extent that state regulation of intrastate interconnection compensation adversely affects the rates for CMRS services. Finally, the Commission has the authority to preempt state regulation in the area of interconnection compensation to the extent that it materially impedes or thwarts the development of CMRS providers as competitors in the local exchange marketplace.

the lines of argument developed in the submissions by other parties, and summarized by the Commission in the Notice, are valid and legally sustainable. Once this jurisdictional barrier has been surmounted, however, the way in which the Commission's jurisdiction is implemented becomes crucial. Centennial believes that the Commission must take firm and definitive actions to implement its interconnection policies in order to ensure the uniform development of CMRS -- state public utility commissions vary in their authority, resources and expertise and LECs vary in their approaches to interconnection issues. In order to avoid the very real prospect of a patchwork approach to the development of CMRS, both in terms of timing and substance, the Commission must develop specific federal policies and requirements for interstate and intrastate LEC/CMRS interconnection arrangements.

Centennial believes that the Commission has the statutory authority to assert jurisdiction over the rates and terms of both interstate and intrastate interconnection between CMRS providers and LECs. The 1993 Budget Act amendment to Section 2(b) of the Communications Act, which inserted an exception for Section 332, provides a clear avenue to conclude that Section 2(b)'s general denial of Commission jurisdiction over intrastate telecommunications does not apply to the provision of LEC interconnection to CMRS. Pursuant to Section 332(c)(3), states are specifically preempted from regulating the "entry of" CMRS providers. The price and terms of interconnection are such

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Id.

crucial issues for CMRS providers that to permit barriers to be erected via policies and actions which are deemed to be off limits because they are intrastate would do by indirection what the states are prohibited from doing directly, namely, effectively regulating the "entry of" CMRS providers.[39] This cannot be what Congress had in mind. Any entry barriers, whether direct or indirect, should be prohibited. Thus, even if the statute cannot be read to expressly preempt state regulation of the intrastate aspects of interconnection, Centennial believes that it is clear that the Commission has the authority to do so on its own.

In addition, Section 332(c)(3) provides that states have no authority over "rates charged" by CMRS providers. Neither the statute nor the legislative history define what "rates" Congress is referring to. Therefore, under a plain reading of the statute, it would seem that the rates charged by a CMRS provider for completing LEC-originated traffic are "rates" charged by a CMRS provider which a state is forbidden to regulate. It would be incongruous for the Commission to have exclusive jurisdiction over the interconnection rates charged by a CMRS provider to a LEC, but to not be able to regulate the intrastate portion of interconnection rates charged by a LEC to a CMRS provider.

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[39]The Commission has explicitly recognized this danger: "the charge for the intrastate component of interconnection [at times] may be so high as to effectively preclude interconnection. This would negate the federal decision to permit interconnection, thus potentially warranting our preemption of some aspects of particular intrastate charges." *Second Report and Order*, 9 FCC Rcd 1411 at 1497.

Moreover, to allow states to have jurisdiction over interconnection rates at all would indirectly affect CMRS rates. In short, the preemption of state authority over the entry of and rates charged by a CMRS provider contained in Section 332(c)(3) support Commission preemption of state jurisdiction over both intrastate and interstate interconnection matters.

Even if the 1993 Budget Act was not deemed to supersede the Supreme Court's 1986 ruling in Louisiana Public Service Commission v. FCC,[40] which Centennial believes it does, Commission preemption in the interconnection area would not contravene that case. First, the court in Louisiana PSC was unable to overcome the tension between Section 2(b), which contains a denial of Commission jurisdiction over intrastate matters, and Section 220 of the Act. In the case of CMRS regulation, Congress placed a specific exception in Section 2(b) for the regulation of CMRS as set forth in Section 332. Second, unlike the dual depreciation schedules which were the subject in Louisiana PSC, the inconsistent interconnection policies which are under discussion in the Notice are not susceptible to co-existence. Unless there is uniformity in interstate and intrastate interconnection policies, there will not only be a patchwork of different results in the various jurisdictions, but also there is a very real risk that Congress' goal for the rapid and effective deployment of a system of CMRS providers would be

[40]476 U.S. 355, 106 S. Ct. 1890, 90 L. Ed. 2d 369 (1986).

thwarted.[41] One need look no farther than the story, related in Exhibit 1 of these comments, regarding Centennial's experience to date in Puerto Rico for confirmation of this risk. Third, Section 2(b) is not a bar to preemption where the inter- and intrastate aspects of a service cannot be separated.[42] The Commission's adoption of market boundaries in PCS is a good example of how CMRS transcends state lines. It is clear that CMRS, like cable television and broadcasting, has an interstate character which is not only physically integrated with its intrastate aspect but also economically intertwined.

The law with respect to federal preemption is well known and was explored in the record of the CC Docket No. 94-54 proceeding.[43] The Supreme Court has explained that preemption of state law may occur in several different ways.[44] First, Congress may expressly preempt state law.[45] Second, Congress may legislate so comprehensively that it creates a "reasonable . . . inference that Congress left no room for the States to supplement

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[41]See House Report No. 111, 103d Cong., 1st Sess., 260-261 (1993).

[42]See California v. FCC, 34 F.3d 919 (9th Cir. 1994); PUC of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).

[43]The federal government, when acting within the confines of its constitutional authority, is empowered to preempt state law to the extent necessary to achieve a federal purpose. U.S. Const. art. VI, cl. 2.

[44]Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. at 368-69.

[45]Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 203, 103 S. Ct. 1713, 1722, 75 L. Ed. 2d 752 (1983).

it."[46] Under such circumstances, where Congress intends that federal law "occupy the field"-- i.e., be exclusive in the area, state law within the field is preempted. Third, state law is displaced to the extent that it conflicts with federal action.[47]

This last breed of preemption - conflict preemption - may occur in two ways. First, a provision of state law may be incompatible with a federal statute such that compliance with both is a "physical impossibility."[48] Second, even if compliance with both is not impossible, state law is nonetheless preempted if its application would disturb, interfere with, or seriously compromise the purposes of the federal statutory scheme.[49] In other words, an application of state law that would frustrate the purpose of a federal statutory scheme is preempted.[50]

Stated differently, state action is preempted if its effect is to discourage conduct that federal legislation specifically seeks to encourage. The Supreme Court has made clear that there is no litmus test for determining whether a particular application of state law would frustrate a federal purpose:

> This Court, in considering the validity of state laws in the light of . . . federal laws touching the same subject, has made use of the following expressions: conflicting, contrary to; occupying the field; repugnance; difference; irreconcilability;

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[46]Id. at 204, 103 S. Ct. at 1722.

[47]Id.

[48]Id.

[49]Id.

[50]See id. at 220-21, 103 S. Ct. at 1731.

> inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of the particular case, [state] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[51]

Preemption of LEC/CMRS interconnection issues is warranted in the present case to further two separate federal policies: (1) a strong federal policy underlying Section 332 favoring a nationwide wireless network;[52] and (2) as discussed above, the federal goal of encouraging competition in the provision of local exchange services.[53]

Centennial believes that the Commission should move swiftly and definitively in this area. The Commission's first alternative, development of a federal interconnection policy framework, would be inadequate to meet the stated goals because such a policy would be voluntary and the problems of uniform interpretation among the states are all too easy to predict. Centennial suggests proceeding along the lines of the Commission's second and/or third approaches, both of which involve mandatory parameters. Centennial strongly urges the Commission to promulgate specific federal requirements for

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[51]Hines v. Davidowitz, 312 U.S. 52, 67, 61 S. Ct. 399, 404, 85 L. Ed. 581 (1941).

[52]Notice at ¶111.

[53]See 1996 Telecommunications Act at §253.

interstate and intrastate LEC/CMRS interconnection arrangements.[54]

This does not mean that there would be no room for state public utility commissions in this regulatory scheme. For example, insofar as the Commission adopted a federal requirement that interconnection rates had to be cost-based using a long run incremental cost methodology, the states would be charged with the responsibility of overseeing the development of the rates.[55]

Centennial believes, based on its own experience, that the more latitude the Commission gives the states and LECS, the

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[54]For example, specific requirements for "co-carrier" status should be developed and mandated to make it clear that each carrier is responsible for its own costs in complying with federally mandated interconnection on a jurisdictionally neutral basis. In addition, as discussed infra, such interconnection negotiations should be conducted in good faith, within a limited time period, and subject to a request for Commission arbitration. Moreover, jurisdictionally neutral mutual compensation should be mandated. The Commission should require LECS and CMRS providers to adopt a "bill and keep" policy on an interim basis. The Commission should require long term cost-based rates, developed by the LEC with a long run incremental cost methodology. The rates should reflect a "symmetrical compensation" scheme such that a single set of rates is used to avoid manipulation of rates and demand. The Commission must also require that any separate charge by the LECs to its subscribers based on calls that they make to CMRS units must be cost-based and non-usage sensitive. See Notice at ¶60. The potential for abuse in LECs setting these rates at levels that operate as an anticompetitive disincentive for their subscribers to call CMRS units is enormous.

[55]The courts have held that:

> [T]he FCC does not relinquish its preemption power simply because it has decided to exercise it narrowly, and to defer to the states in some area of common interest.

California v. FCC, 39 F.3d 919, 931-933 (9th Cir. 1994) cert denied, 115 S.Ct. 1427 (1995).

greater the opportunity there will be for continued delay and the maintenance of barriers to full competition. Specificity in establishing new LEC/CMRS interconnection policy is crucial to avoid having states placing widely varying interpretations on a set of federal guidelines. Such a patchwork of regulatory approaches would undermine national uniformity and impede the development of CMRS as a competitive force in the local exchange marketplace.

CONCLUSION

Centennial agrees with the Commission's conclusion that the current LEC/CMRS interconnection rules are insufficient to permit CMRS providers to develop into viable competitors to incumbent LECs. Centennial also agrees with the Commission's conclusion that it has the authority to assert jurisdiction over both interstate and intrastate LEC/CMRS interconnection agreements. Centennial urges the Commission to exercise such authority in order to avoid a patchwork of inconsistent regulatory requirements that would threaten the ability of CMRS carriers to effectively compete with incumbent LECs.

Consistent with federal policy seeking to foster competition in the provision of local exchange service, Centennial urges the Commission to adopt and enforce specific LEC/CMRS interconnection rules for the exchange of both interstate and intrastate traffic. Such rules should include: (1) a renewed commitment to ensuring that CMRS providers are treated as co-carriers by incumbent LECs;

(2) a "bill and keep" compensation mechanism for the exchange of LEC/CMRS traffic on an interim basis, followed by privately negotiated interconnection agreements once competition has taken root; (3) provisions allowing for Commission arbitration if the parties are unable to reach agreement on the terms and conditions of interconnection; and (5) a requirement that all privately negotiated interconnection agreements, whether voluntary or achieved through arbitration, be submitted to the Commission and available for public inspection.

Centennial's ongoing, and heretofore futile attempts to negotiate a PCS interconnection agreement with the Puerto Rico Telephone Company, highlights the need for active Commission involvement in the area of LEC/CMRS interconnection arrangements. Absent a strong role by the Commission, CMRS carriers will likely fail as viable competitors in the provision of local exchange services.

Respectfully submitted,

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Date: March 4, 1996

Centennial Cellular Corp.
Comments in CC Docket No. 95-185
March 4, 1996

II. B. Implementation of Compensation Arrangements

EXHIBIT 1

THE PUERTO RICO CASE STUDY[1]

1. The Initial Non-Response PRTC Delay Tactic

Centennial first approached PRTC in late March, 1995, just after winning the B-Block auction, to discuss interconnection and requested such interconnection in April, 1995. Since that time, PRTC has delayed the negotiating of a PCS interconnection agreement by not responding to Centennial's overtures, using excuse after excuse for its delays, or paying lip service to the notion of "good faith" negotiations without actually negotiating.

Upon being approached in April 1995 by Centennial with a request for interconnection, PRTC promised that it would provide a draft interconnection agreement to Centennial in approximately one month. Centennial heard nothing from PRTC for three and one-half months. On August 1, 1995, Centennial provided PRTC with a document that set forth Centennial's view of what needed to be in an interconnection agreement and specifically asked PRTC to provide its comments. The document detailed Centennial's position on NXX codes, co-carrier status, reciprocal compensation, cost-based rates and local transport, among other

[1]See Centennial Cellular Corp. v. Puerto Rico Telephone Company, File No. E-96-13, filed December 1, 1995.

issues. This document was intended to get negotiations going because PRTC had failed to provide a draft interconnection agreement as it had promised three and one-half months earlier. Given PRTC's commitment to present a draft agreement, Centennial chose to provide PRTC with direct input on what should be in its draft in an effort to speed up PRTC's drafting. PRTC did not even address the document.

2. The "Linkage" PRTC Delay Tactic

PRTC's intent to delay is also evident from statements made by one of its primary contact persons during a September 1, 1995 conference call with representatives of Centennial. Centennial was plainly told that PRTC would not discuss Centennial's PCS interconnection request until unspecified issues relating to Centennial's competitive access provider affiliate, Lambda Communications, Inc. ("Lambda"), were resolved, and in any event, PRTC would not negotiate any PCS interconnection agreement with Centennial unless Centennial agreed to use PRTC's local access facilities instead of Lambda's fiber facilities. This effort to delay if not deny the PCS interconnection request is particularly damning to PRTC because at the same time it was linking that interconnection request to the use of its own transport facilities, PRTC was flatly denying Lambda's interconnection request except pursuant to NECA FCC Tariff No. 5. It is clear that PRTC linked the two interconnection requests because it knew that Lambda could not provide economically viable transport

service to Centennial if it could only interconnect its fiber network with PRTC's network pursuant to NECA Tariff No. 5. By linking the two requests, PRTC could effectively deny Centennial's PCS interconnection request unless Centennial accepted PRTC's transport service offering.[2]

It was not until Centennial complained of the linkage of Centennial's PCS interconnection request with Lambda's interconnection request to PRTC in a September 14, 1995 letter that PRTC attempted to disengage the two interconnection requests and produced a draft PCS interconnection agreement on September 25. PRTC's belief that its September 25 draft reflects the "industry standard" only serves to indicate that the draft was produced quickly upon abandoning the linkage between the two interconnection requests. Moreover, there is no possible reasonable explanation other than intentional delay to explain why it took PRTC more than five months to produce a draft interconnection agreement claimed by PRTC to reflect be the "industry standard."

3. The September 25, 1995 Draft Agreement Delay Tactic

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[2]PRTC is the only Tier 1 telephone company who remains a member of the National Exchange Carrier Association sharing pools and thus avoids the Commission's expanded interconnection obligations. The Commission should note that Lambda Communications, Inc., Centennial's affiliate, filed a Petition for Emergency Rulemaking with the Commission seeking to have expanded interconnection requirements applied to PRTC. See In the Matter of Lambda Communications, Inc., Emergency Petition for Rulemaking to Apply Expanded Interconnection Obligations to the Puerto Rico Telephone Company, RM No. 8708 (filed November 22, 1995).

An additional delay tactic was PRTC's production of its September 25, 1995 draft interconnection agreement followed by a claim that Centennial should negotiate the terms of that draft even though PRTC's September 25 draft was completely devoid of any rates, charges or other pricing information. PRTC's unreasonable desire at this juncture was that Centennial comment upon and negotiate the non-rate terms of an interconnection arrangement without even having received a rate proposal. Centennial repeatedly made clear to PRTC that the rate information was the most critical part of the interconnection arrangement and that it would not negotiate secondary issues in a vacuum.

Centennial has made clear to PRTC from the very beginning that interconnection compensation had to be negotiated first because this was the critical issue. Centennial withheld its comments on PRTC's September 25 draft interconnection agreement because it contained no information on interconnection compensation and without agreement on this issue, negotiation of secondary issues would be a waste of time.

Nonetheless, once Centennial received even PRTC's bare proposed interconnection rates at a December 20, 1995 meeting with PRTC and in anticipation of a second meeting scheduled for January 23, 1996, Centennial addressed some of the proposed provisions of PRTC's September 25 draft and offered specific

alternatives in a January 3, 1996 letter.[3] At the January 23, 1996 meeting, Centennial also provided PRTC with a red-lined/strike-out version of its September 25 draft interconnection agreement. In keeping with its overall strategy of effectively denying Centennial a viable PCS interconnection agreement, PRTC has yet to respond to this revised version of the September 25 draft even though it was handed the revisions more than a month ago.

Despite PRTC's lack of negotiation on the key issues of "co-carrier" treatment and interconnection compensation, PRTC has expressed the view that the interconnection negotiations are moving forward because the parties have discussed minor and often standard contract provisions and reached agreement on some of these items. In Centennial's view, absent progress on the core issues, these discussions and agreements reflect motion but not progress.

4. The "Access and Service Request" PRTC Delay Tactic

Yet another delay tactic employed by PRTC is that, since Centennial requested interconnection in April, 1995, PRTC was waiting for Centennial to submit the appropriate Access and Traffic Service Request ("ASR") documentation describing the technical facilities about which the parties would be negotiating before completing its September 25 draft and the interconnection

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[3] See infra for discussion concerning the December 20, 1995 and January 23, 1996 meetings and any intervening correspondence.

pricing information.[4] Two blatant absurdities characterize this tactic. First, although PRTC claimed to have requested that Centennial submit a service order request as early as April 1995, PRTC did not provide an ASR form until October 17, 1995.[5] Second, and most importantly, PRTC was well-aware that the information requested by the ASR form is relevant only to determining the number and location of T-1 lines needed for the provision of local transport between Centennial's designated point of presence for its PCS network and PRTC's landline network. The ASR form did not seek any information needed to produce a draft interconnection agreement, particularly like the

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[4]Considering that during the December 20, 1995 meeting, PRTC stated that its September 25 draft reflects the "industry standard" for CMRS/LEC interconnection, it strains credulity that PRTC would have spent more than five months preparing and revising a draft interconnection agreement for submission to Centennial.

[5]PRTC also admits that the ASR form was not self-explanatory for PCS carriers by stating that it needed to provide instructions as to what information needed to be furnished by a provider of wireless services to request PCS interconnection on an ASR form before that form could be completed. Given this admitted need to provide instructions, PRTC's failure to provide such instructions to Centennial until October 1995 renders meaningless its claim that it had repeatedly asked Centennial for such a service request before that date. Finally, the ASR form provided to Centennial on October 17, 1995 was tailored for interexchange carrier ("IXC") access, not PCS. PRTC's statement that a PCS-specific ASR form would have required only "slight modification" to the IXC-specific form provided to Centennial - if true - completely undermines PRTC's position that it provided the IXC-specific form because it did not want to take the time to develop an entirely new form for PCS. In any event, approximately half of the ASR form provided to Centennial is irrelevant to PCS. Moreover, PRTC's attempt to make it appear as if it was the least bit concerned with delay is simply not believable given that PRTC waited approximately six months from the time Centennial requested interconnection to provide it even with an IXC-specific ASR form.

September 25 draft, with or without rates. There is nothing in the information requested in an ASR form, such as the quantity and location of PRTC's local transport facilities required by Centennial, that would have affected anything in a proposed PCS interconnection agreement. Indeed, the draft interconnection agreement finally produced by PRTC on September 25, 1995 and the proposed rates provided on December 20, 1995 clearly demonstrate this fact.

Moreover, neither the rates nor the non-rate terms of PRTC's local transport offering would have been contained in a proposed PCS interconnection agreement. In fact, PRTC has informed Centennial that the local transport needed to physically connect Centennial's PCS network with PRTC's landline network is to be offered pursuant to the NECA Tariff No. 5.[6]

Thus, there is no reason for PRTC to have delayed its drafting of a proposed interconnection agreement, like the September 25 draft, or development of interconnection rates, like the December 20 proposal, while waiting for Centennial to submit an ASR form. PRTC's reliance on the "ASR issue" to justify its delay is a "red herring" and in fact further demonstrates that PRTC was doing everything it could to avoid meaningful and good faith interconnection negotiations with Centennial.

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[6]See In the Matter of Lambda Communications, Inc., Emergency Petition for Rulemaking to Apply Expanded Interconnection Obligations to the Puerto Rico Telephone Company, RM No. 8708 (filed November 22, 1995).

5. The "Tariff K" PRTC Delay Tactic

Yet another transparent delay tactic employed by PRTC was to offer Centennial a PCS interconnection arrangement pursuant to Section K of its existing cellular and other mobile carrier interconnection tariff - termed "Tariff K." PRTC's reliance on the availability of interconnection under the terms of its cellular tariff is grossly misplaced and does not mitigate its continuing failure to negotiate in good faith.[7]

Centennial made it clear to PRTC from the outset that it sought a permanent interconnection agreement for its PCS system, and that PRTC's cellular tariff was not acceptable.[8] Most importantly, as PRTC well knows, the reason Centennial approached PRTC regarding interconnection promptly after winning the Block B PCS auction was to assure that a permanent interconnection agreement would be in place when it was ready to commence testing its PCS network in Puerto Rico. PRTC's offer of interconnection pursuant to its cellular interconnection tariff in April 1995 is meaningless because no interconnection was needed until Centennial was ready to test its network. PRTC's refusal to negotiate in good faith for over eight months left Centennial

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[7]Centennial explained to PRTC at the outset that it intended to be a full-fledged competitor in the local exchange marketplace, providing mobile, portable and fixed services, including wireless local loop services.

[8]PRTC also disingenuously blamed Centennial for not accepting interconnection pursuant to Tariff K - which requires the use of PRTC's local access facilities - while stating that Centennial was not required to use PRTC's local access facilities.